In The

Supreme Court of the United States

October Term, 1976

76-180 HENRY SMITH, *etc., et al.*, *Appellants-Defendants,*

–against–

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM, *etc., et al.*, *Appellees.*

76-183 BERNARD SHAPIRO, *etc., et al.*, *Appellants-Defendants,*

–against–

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM, *etc., et al.*, *Appellees.*

76-5193 NAOMI RODRIGUEZ, *etc., et al.*, *Appellants-Intervenors,*

–against–

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM, *etc., et al.*, *Appellees.*

76-5200 DANIELLE and ERIC GANDY, *etc., et al.*, *Appellants-Plaintiffs,*

–against–

ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM, *etc., et al.*, *Appellees.*

On Appeal from the United States District Court for the Southern District of New York

MOTION TO AFFIRM

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Printinghouse Press – Bar Ass'n Steno Serv. (Appeals Section) 212-687-0384

TABLE OF CONTENTS

TABLE OF CASES

STATUTES AND REGULATIONS

MISCELLANEOUS

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MOTION TO AFFIRM

Appellees Organization of Foster Families for Equality and Reform, Madeline Smith, Ralph and Christiane Goldberg, George and Dorothy Lhotan, and the class of foster parents they represent* move, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, that the final judgment and decree of the District Court be affirmed on the grounds that the questions raised by the decision below are so insubstantial, and the decision below so plainly correct as not to warrant further argument.

Questions Presented

1. Was the District Court's decision, holding that the New York State statutes and regulation authorizing the peremptory removal of foster children from foster homes without a prior hearing violate the due process rights of foster children, clearly consistent with this Court's interpretation of the due process clause of the Fourteenth Amendment?

2. Did the District Court have jurisdiction to recognize the constitutional rights of foster children, and to fashion relief accordingly, when the only arguments in support of such rights were advanced by appellee foster parents?

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* Opinion of R.L. Carter, U.S.D.J., A. 42a-50a.

Statement of the Case

The named appellees in this civil rights class action are foster parents who, for more than one year, have cared for children placed in their homes by authorized child-care agencies* in the State of New York. In conjunction with an organization of foster parents, they filed suit on their own behalf, on behalf of other foster parents, and on behalf of the foster children for whom they care, asserting that New York Social Services Law §§383(2) and 400, and 18 New York Code Rules and Regulations §450.14,** the provisions governing the removal of foster children from foster homes, violate the due process and equal protection*** clauses of the Fourteenth Amendment.

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* The term "authorized child-care agencies" refers to an agency authorized by the New York State Board of Social Welfare, pursuant to New York Social Services Law §371(10), to place and supervise children in approved foster homes, and includes both voluntary child-care agencies, such as the Catholic Guardian Society, and public agencies, such as the Nassau Children's Bureau.

** Since renumbered and hereinafter referred to as 18 N.Y.C.R.R. §450.10

*** The district court did not reach appellees' equal protection claim, A., 20a.

The circumstances surrounding the initiation of this lawsuit by appellee Madeline Smith are typical of the abuses which could occur and which have occurred under the procedures declared unconstitutional by Judge J. Edward Lumbard, writing for the district court in this case.

Mrs. Smith, a widow whose only child had died, became a foster parent under the supervision of Catholic Guardian Society, after making clear to the agency that she wanted to care for children who had no family of their own. (R., Second Amended Complaint, ¶23) Eric and Danielle Gandy, then four and two years old respectively, were placed with Mrs. Smith as foster children in February, 1970. It is undisputed that Danielle has never seen her mother and Eric does not remember her. (A., p. 6a) Both children regard Mrs. Smith as their mother and Mrs. Smith has repeatedly expressed her desire to adopt the children. (R., Second Amended Complaint, ¶27) In 1974, a new worker assigned to the family by Catholic Guardian Society notified Mrs. Smith that Eric and Danielle were to be removed from her home. Appellees alleged and appellants did not deny that the agency planned to move Eric and Danielle to an agency-operated boarding home. Mrs. Smith received a written notice of the planned removal which stated only that the children were to be removed because "to continue to plan for Eric and Danielle, it is now in their best interests to leave your home. . ." (R., Second Amended Complaint, ¶30) The only review of this decision available to Mrs. Smith prior to Eric and Danielle being taken

from her home was the conference provided by 18 N.Y.C.R.R. §450.10, in which she would not have an opportunity to present or cross-examine witnesses or inspect agency records but would have the burden of submitting "'reasons why the child should not be removed.'" (A., p. 4a) Only after Eric and Danielle had been separated from the only family they knew would Mrs. Smith have been able to obtain an administrative review of the removal decision, in accordance with 18 N.Y.C.R.R. §450.10 (c) and New York Social Services Law §400.

Mrs. Smith filed this action on her own behalf and on behalf of Eric and Danielle Gandy on May 9, 1974. The removal of the Gandy children without a prior due process hearing, scheduled to take place on May 10, 1974, was temporarily enjoined by the district court on May 9, 1974, and that injunction was continued until dissolved during the course of this litigation, based on a representation that the agency had changed its plans about removing the Gandy children from their home with Mrs. Smith.

As of this date, Eric and Danielle continue to live with Mrs. Smith, under the supervision of a different Catholic Guardian Society worker, and Mrs. Smith has initiated legal action to adopt Eric and Danielle.

It is the procedures which would have permitted the ill-conceived and peremptory removal of Eric and Danielle Gandy from their home with Mrs, Smith, without a prior due process hearing, which have been declared unconstitutional by the court below.

A. The Procedure

The procedure for removing children from foster homes is summarized in the opinion of the district court, Appendix "A," p. 4a. New York Social Services Law §383(2), A., p. 51a, vests total discretion in a child-care agency to decide when and under what circumstances a child should be removed from a foster home under the agency's supervision. The decision is made initially by a worker who need not have any special training in social work or psychology* and who might be the third, fourth, or tenth worker on the case.** The foster child, regardless of age,need not be consulted about the decision to sever the bonds of what may be the only family he or she has ever

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* R., Brennan dep., pp. 4,6.

** Appellee Dorothy Lhotan testified that during the four years she had the Wallace children in her home, she had had three different caseworkers. R., hearing tr., p. 148.

Appellee Christiane Goldberg, whose foster child had been placed with her five and a half years ago on a temporary basis, testified:

> "Every worker had essentially a different plan. Every time we change workers, they had a different opinion. Even the last worker first said he wasn't going to move him and then said he was." R., hearing tr., p. 131.

known.*

The district court found that the removal procedure operated in the following manner:

> "The present statutory scheme, applicable throughout most of the state, [fn. omitted] provides that the local public welfare department or an authorized private agency acting on its behalf [fn. omitted] may, in its discretion and on 10 days notice, order the removal of any foster child from the foster home in which he or she has been placed. Social Services Law §383(2) and 400. After having been informed of the impending removal in a printed notice which contains no space for any detailed elucidation of the reasons for that removal, the foster parents may request a conference with a 'public official' of the local social services department at which they have an opportunity to express their dissatisfaction with the agency's decision but

* Twelve-year-old Cheryl Wallace, a foster child of appellees Lhotan, testified that neither she nor her sisters had been asked whether they wanted to leave their foster home prior to the time that the Nassau Children's Bureau notified the Lhotans of the agency's decision to remove the children. R., hearing tr., p. 166.

> no formal manner is provided whereby they may contest it. N.Y.C.R.R. §450.14.
>
> "Although the foster parents may be accompanied to the conference by 'a representative,' they may not present or cross-examine witnesses, nor may they inspect the agency files even if records contained therein formed the predicate for the administrative decision. Yet, despite these handicaps, the burden is upon the foster parents to submit 'reasons why the child should not be removed.' The agency, by contrast, has no countervailing obligation to provide an articulated rationale for removing the child. N.Y.C.R.R. §450.14. There is evidence in the record which indicates that rarely, if ever, do these pre-removal conferences result in the reversal of the initial decision." A., pp. 4a-5a.

Judge Lumbard found that the procedures were inadequate to fulfill a "data-gathering function," (A., p. 12a), and concluded, "Such a scheme fails to satisfy even the most minimal requirements of procedural due process." (A., p. 12a)

The challenged statutes and regulation do provide for full administrative review - but that review is available only after the child has been removed from the foster home. New York Social Services Law §400(2), 18 N.Y.C.R.R. §450.10(c). Judge Lumbard flatly rejected

the state's argument that any constitutional defects in the removal procedures could be cured by the availability of a post-removal "fair hearing." (A., pp. 12a-13a)

B. Foster Care in New York

Appellants, in their jurisdictional statements, have urged the Court to give plenary consideration to this case, based in part on the argument that foster care is a "temporary" arrangement and therefore does not create interests or relationships which warrant due process consideration or, in any event, are adequately protected by the challenged procedures,* and that the district court erred in holding otherwise. While that may be the theory of foster care, it is clearly not the reality in the State of New York, as the district court recognized, pointing out that "'[t]he median length of stay for dependent and neglected children in foster care at the end of 1973 was 4.38 years.'" (A., p. 18a)**

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* Jurisdictional Statements, Appellants-Intervenors Rodriguez et al., p. 8; New York City Appellants, p. 33; Appellants Shapiro and Lavine, p. 5.

** Jane Edwards, the director of a voluntary agency responsible for 1300 children, acknowledged that even children which the agency itself recognized to be in a "permanent foster home," a home in which the child might have lived for twelve years or more, could still be removed from that home at the agency's discretion, under the challenged procedures. R., hearing tr., p. 99.

Moreover, children in foster care are likely to be shifted from one foster care setting to another, with only a small percentage of the children removed from a foster home being removed for a return to a natural parent* and almost 60% of the children in one study experiencing more than one placement, and almost 30% being moved three or more times.**

The consequences of such disruption to the emotional well-being of children who have already suffered the initial disruption of leaving their natural family*** cannot seriously be disputed.

> "Plaintiffs' experts assert that continuity of personal relationships is indispensable to a child's well adjusted development. We do not need to accept that extreme position to recognize, on the basis

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* R., Answers of state defendants Lavine and Shapiro to plaintiffs' interrogatories, Aug. 12, 1974; R., dep. of Prof. David Fanshell, pp. 113, 119, Exh. A and B, p. 161.

** R., dep. of Prof. David Fanshell, p. 124, Exh. A.

*** "By far the most common conditions prompting admission to foster care are neglect and abandonment of dependent children by their parents." Program Analysis Report No. 56, October, 1974, "Time Spent in Care by Children Served in the New York State Foster Care Program 1973," prepared by the New York State Department of Social Services, p. 13, R., dep. of Robert Catalono, Exh. B., p. 5.

> of our common past, that the already difficult passage from infancy to adolescence and adulthood will be further complicated by the trauma of separation from a familiar environment. This is especially true for children such as these who have already undergone the emotionally scarring experience of being removed from the home of their natural parents." A., p. 11a

The three judge district court heard one full day of testimony and had before it almost 1,000 pages of depositions from psychiatrists, social scientists, public officials and employees, concerning the realities of foster care in New York and its impact on children.

Appellees presented the testimony of three distinguished psychiatrists specializing in child and adolescent psychiatry, all of whom have had experience treating foster children and all of whom testified that unnecessarily removing a child from a foster home could cause permanent psychological damage. R., Dr. Marie Friedman, hearing tr., pp. 12, 13, 14, 16, 17; deps. of Dr. Albert Solnit, pp. 14, 23, 25, 26, 27, and Dr. Stella Chess, pp. 24-26.

The court relied on this evidence, its knowledge of "our common past," and the principles and standards upon which the federal courts have interpreted the due process clause of the Fourteenth Amendment, to reach the conclusion that

"the pre-removal procedures presently employed by the state are constitutionally defective."*

ARGUMENT

Taken together, the contentions of appellants can be briefly summarized:

1) There is no interest worthy of constitutional protection in the relationship between a foster child and a foster family;

2) Even if such a constitutional protection could be implied from earlier Supreme Court rulings, recent decisions have narrowed the zone of interests to be accorded due process protection;

3) Even if the New York procedures violate the due process rights of foster children, the district court was without jurisdiction to reach such a conclusion.

These contentions are clearly incorrect.

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* A., p. 9a.

POINT I

THE DISTRICT COURT ACTED IN ACCORDANCE WITH BOTH TRADITIONAL AND RECENT DUE PROCESS STANDARDS IN DECLARING THE NEW YORK PROCEDURES UNCONSTITUTIONAL.

The district court held that foster children have a constitutional right to freedom from "arbitrary or misinformed action"* with regard to removal from a foster home in which they have lived for over one year. The basis for such a right is obvious: "the harmful consequences of a precipitous and perhaps improvident decision to remove a child from his foster family are apparent."** Whether the right is viewed as being based on the concept of a state-provided benefit *** or on the concept of

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* A., p. 10a.

** A., p. 11a.

*** Regardless of whether the state has an obligation to act, when it chooses to act it must do so in a fair and non-arbitrary manner. The State of New York has chosen to provide children for whom it has assumed responsibility with the benefit of living in a foster home and forming a relationship with adults the state has approved as suitable foster parents. Removal of a child from a foster home in which the child has lived for a year or more, and in which the child is likely to

[fn. cont'd p. 15]

liberty* is not crucial. Goldberg v. Kelly, supra, 397 U.S. at 262; Shapiro v. Thompson, 394 U.S. 618 (1969).

Both the dissenting opinion** and appellants' jurisdictional statements have blurred together both stages of the two stage process necessary for a due process inquiry: 1) whether a protected right is infringed by the state and, if so, 2) whether the procedures available are adequate in view of the nature of the deprivation. Goss v. Lopez, supra, 419 U.S. at 576, citing Sniadach v. Family Finance Corp., 395 U.S. 337, 342 (1969); Boddie v. Connecticut, 401 U.S. 371, 378-379 (1971); Board of Regents v. Roth, supra, 408 U.S. at 570, n. 8. Judge

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[fn. cont'd from p. 14]
have formed a relationship of some significance to the child, (R., deps. of Dr. Solnit, pp. 13, 15, 22; Dr. Chess, p. 65) constitutes a withdrawal of a state-provided benefit. The withdrawal of a state-provided benefit cannot be arbitrary and has repeatedly been accorded due process protection. Goldberg v. Kelly, 397 U.S. 254 (1970); Bell v. Burson, 402 U.S. 535 (1971); Perry v. Sindermann, 408 U.S. 593 (1972).

* "In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed." Board of Regents v. Roth, 408 U.S. 564, 572 (1972). See also Goss v. Lopez, 419 U.S. 565 (1975); Palko v. Connecticut, 302 U.S. 319, 325 (1937).

** A., p. 21a.

Lumbard, writing for the district court, properly looked at the nature and manner of the loss and found that it gave rise to constitutional protection. The court then evaluated the degree of the loss, weighed the adequacy of the existing procedural safeguards and evaluated the governmental interest at stake to come to the conclusion that the procedures were inadequate, and could not be cured by the availability of full review after the harm had taken place.* The district court also evaluated the procedures implemented by New York City subsequent to the commencement of this litigation, and found them to be inadequate to protect the rights of the foster child. The court based this holding on its conclusion that a foster child has a right to be protected from all precipitous or uninformed decisions, even if the uninformed decision results in a return to a natural parent, and on the court's view that the child's right to a hearing could not be conditioned upon the foster parent's request for a hearing. For similar reasons, the district court held that existing judicial procedures were inadequate.**

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* A., pp. 12a-13a.

** The review provided by New York Social Services Law §392 takes place at the initiation of the child-care agency, whose discretion the court held to require review, or at the initiation of the foster parent, upon whom the district court decided the child's rights should not be dependent. Furthermore, the §392 review does not provide any representation for the child, the scope of its review and

[fn. cont'd p. 17]

This analysis is consistent with this Court's traditional and recently reaffirmed view of the protection provided by the due process clause: government action resulting in concrete loss or harm will give rise to due process safeguards under the Fourteenth Amendment. Paul v. Davis, ___ U.S. ___, 44 U.S.L.W. 4337, (March 23, 1976);* Wisconsin v. Constantineau, 400 U.S. 433 (1971); Goss v. Lopez, supra; Goldberg v. Kelly, supra.

In reaching its decision, the district court relied on factors emphasized in another recent Supreme Court decision, Mathews v. Eldridge, ___ U.S. ___, 44 U.S.L.W. 4224 (Feb. 24, 1976), in which

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[fn. cont'd from p. 16]
jurisdiction is limited, (A., p. 14a) and agencies are free to remove children from foster homes independent of the court procedure. R., testimony of Jane Edwards, hearing tr., p. 98.

* In Huntley v. Community School Board of Brooklyn, ___ F.2d ___ (2d Cir., Docket No. 75-7190, decided May 12, 1976) the Second Circuit found that the due process clause had been violated, citing Board of Regents v. Roth, supra, and emphasized that the holding in Paul v. Davis, supra, merely distinguishes between remote harm caused by officials abusing their power and harm arising out of the exercise of official responsibilities.

> "They [the School Board and the district superintendent] not merely have exercised official powers for improper purposes; they have abused state functions which they were charged with implementing." Huntley v. Community School Board of Brooklyn, supra, slip op. at 3698-3699.

the Court, id. at 4229, set out a three-pronged test: the private interest affected by the government action; the risk of incorrect deprivation and the degree to which better procedures would alleviate the risk; and the governmental interest involved.

In Mathews v. Eldridge, supra, the neutral nature of the information to be assessed prior to termination of disability benefits, the availability of adequate review procedures subsequent to termination, and the provision for full retroactive payment satisfied due process requirements. In the present situation, the district court considered the three elements of this test and found that each of them supported a finding that present New York procedures are unconstitutional.

First, the court concluded that the information to be assessed is often anecdotal, subjective, gathered from a variety of sources, not fully available, conflicting, and "some of it biased." (A., p. 20a, fn. 13a) In addition, Judge Lumbard, writing for the district court, recognized that post-removal procedures cannot possibly make a child who suffers the trauma of an unwarranted separation whole again,* unlike the person who has

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* There was virtually no disagreement among the expert witnesses that it would be contrary to the best interests of a child to be removed from a foster home while there was a possibility that the removal decision would be reversed by a subsequent decision. New York Social Services Law §400 and 18 N.Y.C.R.R. §450.10(c), both declared uncon-

[fn. cont'd on p. 19]

wrongfully been denied disability benefits.

Furthermore, the governmental interests militate in favor of as full a review as possible prior to the removal of a child for whose welfare the state is responsible. In most instances, premature, precipitous removal does not even conserve governmental funds, since the child is likely to be removed to be placed in another foster care setting.* Appellees have suggested that the district court was incorrect in its reliance on the principles in Goldberg v. Kelly, supra, since the governmental decision-makers in the present case do not have interests adverse to those of the children whose lives their decisions will affect. The distinction between the present case and Goldberg v. Kelly, supra, is an unfathomable one; due process protections are necessary because government decision-makers, no matter how benign and well-

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[fn. cont'd from p. 18]
stitutional by the court, provided for post-removal administrative review. See R., testimony of Florence Kreech, hearing tr., p. 69; dep. of Dr. Stella Chess, pp. 57-58.

> "I think any such review process that takes place after the child has been removed is a travesty on the need of the child. . ." Dep. of Dr. Albert Solnit, p. 32.

* See fn. *, p. 11, supra.

motivated, can make mistakes.* Due process protections tend to minimize these mistakes by guaranteeing that as much information is presented as possible, in as fair and unbiased a procedure as feasible. The state, charged as it is with responsibility for both the emotional and physical well-being of foster children, has no conceivable interest in opposing procedures better calculated to provide such significant decisions with a greater degree of reliability.

> "'No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and

* The New York child-care system, like any large bureaucracy, is not without serious criticism. A report,"Census of Children in Care Who May Need Adoptive Planning," by Bellisfield, Allen, and Hyde in 1971 for the New York City Department of Social Services, calls attention to thousands of New York City children lost in the limbo of "temporary" foster care, for whom foster care seems likely to be a permanent arrangement. See also "Barriers to the Freeing of Children for Adoption," Final Report to the New York State Department of Social Services, March, 1976.

Furthermore, three psychiatrists testified that they had reason to be critical of the initial decision-making process with regard to the removal of a child from a foster home. R., dep. of Dr. Albert Solnit, p. 34; Dr. Stella Chess, p. 59.

> "[T]his is an area of enormous distress to those of us dealing

[fn. cont'd. p. 21]

> opportunity to meet it.' Anti-Fascist Committee v. McGrath, supra, at 170, 171-172, . . . (Frankfurter, J., concurring).'" Goss v. Lopez, supra, 419 U.S. at 580.

The district court decision has merely applied well recognized principles to New York State procedures for removing children from foster homes in which they have lived for a year or more. The court determined that the pre-removal procedures are so inadequate as to not provide even minimal due process safeguards,* and has ruled that the serious harm which is likely to result from precipitous and unnecessary removal cannot be cured by the availability of post-removal procedures.

[fn. cont'd from p. 20]

> with psychiatric problems and child development problems.
> . . .
> "There is a kind of - I am sure it is based on some good intentions, a sense of ownership as far as children are concerned." R., testimony of Dr. Friedman, hearing tr. pp. 17-18.

* A., p. 37a. The district court order did not, in itself, mandate any specific procedures. It merely enjoined the existing procedures as unconstitutional, and required state and local officials "to formulate procedures suitable to their own professional needs and compatible with the principles set forth in this opinion. A., p. 17a.

This decision does not require further consideration, and should be summarily affirmed by this Court.

POINT II

THE DISTRICT COURT HAD JURISDICTION TO ORDER THE RELIEF GRANTED IN ITS DECISION.

Appellants have argued that this Court should set this case down for plenary consideration based on an argument going to the district court's jurisdiction, and apparently composed of three elements which appellants have interwoven: whether an Article III controversy exists, whether appellees have standing, and whether the district court could grant the relief it did.

Admittedly, this case was decided in a somewhat unusual framework. Appellee foster parents filed suit asserting that the constitutional rights of both foster parents and foster children were being violated, with resultant harm to the children. A single judge of the district court appointed separate counsel for the foster children, who proceeded to file an answer to the complaint, argue that the constitutional rights sought were not in the best interests of children, and appeal from the district

court's decision.*

This situation did not, however, deprive the district court of jurisdiction. There can be no doubt of the existence of the actual controversy required by Article III of the Constitution; the foster parent plaintiffs were aggrieved by the procedures of which they complained, and had, and continue to have, a sufficient personal interest in the controversy to insure concrete adverseness in the presentation of the issues. Diggs v. Shultz, 470 F.2d 461, (D.C. Cir. 1972), cert. den., 411 U.S. 931 (1973).

The issue of standing is a part of the question relating to the existence of an actual controversy, as required by Article III. So long as appellees have alleged a distinct injury to themselves, as well as to the foster children, the requirement of Article III is satisfied. Appellees also

> "may have standing to seek relief on the basis of the

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* Subsequent to the decision of the three judge court, appellee foster parents moved before a single judge for the appointment of substitute or additional counsel to represent the interests of the class of foster children whose rights the district court had held were being violated. While conceding that the situation was "somewhat anomalous" and that he believed the position of Helen Buttenwieser,the present attorney for the foster children,was "unsound," Judge Robert L. Carter denied the motion. The motion has been appealed to the United States Court of Appeals for the Second Circuit and will be argued the week of October 12, 1976.

> legal rights and interests of others, and, indeed, may invoke the general public interest in support of their claim." Warth v. Seldin, 422 U.S. 490, 45 L.Ed.2d 343, 356 (1975), citing Sierra Club v. Morton, 405 U.S. 727, 737 (1972), F.C.C. v. Sanders Bros. Radio Station, 309 U.S. 470, 477 (1940).

Finally, it is clear that the district court had jurisdiction to grant any relief appropriate, regardless of whether any of the elements of the relief had been specifically requested.* Once a case is properly before a federal court, and the requirements of Article III satisfied, it is the essence of equity jurisdiction that

> "where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. . . [F]ederal courts may use any available remedy to make good the wrong done." Bell v. Hood, 327 U.S. 678, 684 (1946).

* Appellees sought constitutional protection for the foster family relationship in the district court. Judge Lumbard, writing for the court, afforded the relationship constitutional protection and ordered appropriate relief based on the constitutional rights of the foster children. Appellees thereby received all the relief they had requested.

See also J.I. Case Co. v. Borak, 377 U.S. 426, 433 (1964); Hecht Co. v. Bowles, 321 U.S. 321, 329-330 (1944); Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1, 15, 16 (1971).

The district court, having found that existing New York procedures violate the constitutional rights of foster children, was acting well within its authority in enjoining the unconstitutional statutes and regulation* and, based on the constitutional principles enunciated in its decision, setting forth the broad constitutional outlines under which new procedures should be formulated.

CONCLUSION

Since the district court reached its decision after evaluating a record of over 1200 pages of testimony and weighing the competing public and private interests involved, and in accordance with this Court's traditional and recently reaffirmed view of the due process clause of the Fourteenth Amendment, appellees respectfully urge this Court to grant their motion to affirm the decision of the district court.

Respectfully submitted,

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Children's Rights Project

* The appellees had sought such a ruling. See Mapp v. Ohio, 367 U.S. 643, 646, fn. 3 (1961).

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Dated: August 31, 1976
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